A.F.R.

60

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition NO. 4827 OF 2005

PETITIONERS

1. Ajay Bharos, son of Shri R.R. Bharos, Adult, resident of Indiravati Colony, Raipur.
2. Lokesh Kumar Tiwari, Son of Shri Lalit Kumar Tiwari, aged about 35 years, resident of G.E. Road, Raipur.
3. Shailesh Jain, son of Shri Suresh Jain, Adult, resident of Indiravati Colony, Raipur.

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through the Secretary, Ministry of Excise, D.K.S. Bhawan, Raipur.
2. The Commissioner (Excise), Raipur.
2A. The Collector, Raipur.
3. Narad Kumar Sahu, son of Shri Premlal Sahu, Proprietor- Fire Bar & Restaurant, Indiravati Colony, Civil Lines Road, Raipur.

Present: Mr. B.P. Sharma, learned counsel for the petitioners.

Mr. Prashant Mishra, learned Addl. A.G. with Mr. Utkarsh Verma, learned Dy. G.A. for the State/respondents 1, 2 and 2A.

Mr. Manoj Paranjpe, learned counsel for respondent No.3.

ORAL ORDER
(Passed on 24th January 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ :

61

The petitioners are the residents of Indravati colony in Raipur city. The petitioners claiming to be *pro bono* public characters have preferred this writ petition under Articles 226 / 227 of the Constitution of India to espouse a public cause complaining against the grant of F.L. 3 licence for the year 2005-2006 commencing from 14-07-2005 by the Collector, Raipur District, the respondent 2-A herein, in favour of the 3rd respondent herein for opening a Hotel Bar under Chhattisgarh Foreign Liquor Rules, 1996, for sale and consumption of foreign liquor to the residents of such hotels for their own use or that of their guests or other causal visitors, with meals and snacks, by contending that respondent 2A has granted licence in favour of the 3rd respondent in breach of the mandatory provisions of Chhattisgarh Excise Act, 1915 (for short "***the Act***") and the Rules framed thereunder.

(2) In support of the above contention raised by the petitioners, it is alleged that there exists Rani Sati Mata Temple, Hidayatullah National Law University, Raj Bhawan, Police Headquarters, Saraswati Shishu Mandir and Petrol outlet within the area prohibited under the Rules framed under Section 62 of the Act. In the premise of the above pleading, the petitioners have prayed for the following reliefs :

> " In view of the facts and grounds mentioned in the paras 5 & 6 of the petition, the petitioner prays for following reliefs :
>
> **7.1** A writ and / or an order in the nature of writ of mandamus do issue commanding and directing the respondent authorities to produce before this Hon'ble Court all the relevant records pertaining to grant of F.L.-III license to respondent No.3 for opening of liquor bar at the said place.
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> **7.2** A writ and / or an order in the nature of writ of mandamus do issue commanding and directing the concerned respondent State authorities to forthwith cancel the FL-III license granted to

62

the respondent No.3 for opening a liquor against the provisions of law.

7.3 A writ and / or an order in the nature of writ of prohibition do issue prohibiting the concerned respondent to continue the liquor bar at the said site in the facts and circumstances narrated in habendum of the petition.

7.4 Cost of the petition may also be granted.

7.5 Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case. "

(3) The writ petition was opposed by respondents 1 and 2 – State Authorities by filing reply. In the reply, it is stated that since the licence granted to the 3rd respondent is F.L. 3 licence, consultation with the Advisory Committee is not necessary. It is stated that the Advisory Committee is generally consulted only in cases where the licence is for opening retail shops and that since the licence granted in favour of the 3rd respondent being F.L. 3 licence for opening Hotel Bar, such a consultation is not necessary. Meeting the contention of the petitioners with regard to the distance between the site where Hotel Bar is permitted to be opened, it is stated that Rani Sati Mata Temple, Hidayatullah National Law University, Raj Bhawan, Police Headquarters, Saraswati Shishu Mandir and Petrol outlet situate at a distance of 465 Mtrs., 380 Mtrs., 415 Mtrs., 195 Mtrs., and 102 Mtrs. respectively form the site of Hotel Bar. The 3rd respondent has not filed reply.

(4) We have heard learned counsel for the parties. Shri B.P. Sharma, learned counsel for the petitioners contended that before granting F.L. 3 licence in favour of the 3rd respondent, the Collector, Raipur District did not consult the Advisory Committee as required under **Rule II of the Rules regarding the constitution and functions of Excise Advisory**

63

Committee constituted in terms of Section 62 (2) of the Act. Learned counsel contended that the said Rule II of the Rules has specified the distance to be maintained from a proposed site of liquor shop. Shri B.P. Sharma pointed out that admittedly Hidayatullah National Law University is situate within the prohibited distance and, therefore, it should be held that grant of F.L.3 licence in favour of the 3rd respondent is in utter violation of the mandatory provisions of the statutory rule and only on that count, the writ petition is entitled to be allowed and the licence granted in favour of the 3rd respondent is liable to be quashed.

(5) We have also heard Shri Prashant Mishra, learned Addl. Advocate General and Shri Manoj Paranjpe, learned counsel for respondent No.3. They would support the impugned action.

(6) Having heard learned counsel for the parties, the only point that arises for our decision is whether the F.L.3 licence granted in favour of the 3rd respondent could be interfered with on any permissible grounds of judicial review. The grant of licence including F.L.3 licence is covered by the statutory rules framed by the State Government by virtue of the power conferred under Section 62 (2) (i) of the Act with regard to grant of retail licence to run retail shop for consumption of liquor on the premise. The undivided State of Madhya Pradesh in exercise of the powers conferred by Section 62 of the Act and all other powers enabling in that behalf framed the rules which rules are hereinafter shortly referred to as "the Rules". Sub –Rule (1) of Rule I of the Rules reads as follows :

> " **I. Location of shops**. (1) No retail shop shall be licensed for the consumption of liquor on the premises, -
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> (a) in, or at the entrance to a market place;

(b) in the neighbourhood of a mill, factory or other place where a large body of labour is employed, without first giving the mill – owner or such employer of labour an opportunity of stating their objections to the proposals;

(c) near a place of worship, a primary or a middle school, a bathing ghat, a hospital, a colony of members of Scheduled Caste a labour colony, a petrol pump, a railway station / yard or a bus stand, without sanction of the State Government, except when such shop is situated at a distance of –

(i) 100 meters or more from such place, where such place is situated within the limits of a town having population exceeding two lacs and fifty thousand, according to the last Census;

(ii) 150 meters or more from such place where such place is situated in any other area;

(d) near a national Highway, a State Highway or an educational institution other than a primary or a middle school, without the sanction of the State Government, except when such shop is situated at a distance of 500 meters or more from such Highway or Institution. "

Similarly, the undivided State of Madhya Pradesh has framed the rules by virtue of the power conferred under Section 62 (2) (i) of the Act for constitution of the Advisory Committees in municipal and cantonment areas. Sub-Rule (1) of Rule II of the said Rules reads as follows :

"**II. Functions of Advisory Committees in municipal and cantonment areas, -** (1) The Collector shall consult the Advisory Committee of the municipal or cantonment areas concerned on all important excise matters directly affecting the consuming public and not concerned with the organisation, discipline or procedure of the Excise Department or the selection of licensees, and in particular before making any change in –

(a) the number of excise shops for the sale of country liquor, intoxicating drugs and foreign liquor under licence form F.L. and their distribution in the several wards of the area; or

(b) the sites of shops licensed for the sale of liquor which may be consumed on the premises. "

(7) Let us first dispose of the contention of Shri B.P. Sharma that before granting F.L. 3 licence in favour of the 3rd respondent, the Collector, Raipur District ought to have consulted the Advisory Committee as required under sub-Rule (1) of aforementioned Rule II. The provisions of sub-Rule (1) of Rule II of the Rules are quite clear, plain and unambiguous and they do not admit more than one meaning. In the premise of sub- Rule (1) of Rule II of the Rules, consultation with the Advisory Committee of municipal or cantonment area becomes imperative only with regard to important excise matters directly affecting the consuming public. In our considered opinion, if the Collector has to lay down some norms and principles for grant of licence involving policy decision in general, he has to do so only after consultation with the Advisory Committee of municipal or cantonment areas concerned, as the case may be. Sub-Rule (1) of Rule II of the Rules itself enacts an exclusory clause which falls outside the consultation with the Advisory Committee. If the District Collector has to take a decision with regard to the organisation, discipline or procedure of the Excise Department or in exercising his power for selection of licensees, then, it is obvious that he need not consult the Advisory Committee. However, Shri B.P Sharma, learned counsel for the petitioner placing reliance on the provisions of clause (b) of sub-Rule (1) of Rule II of the aforementioned Rules would contend that since F.L.3 licence granted in favour the 3rd respondent for sale of liquor for consumption on the premises consultation with the Advisory Committee is a must. The submission of the learned

66

counsel for the petitioners is not well-founded. It is true that consultation with the Advisory Committee becomes imperative among other things if there is a proposal to change in the sites of the shops licensed for the sale of liquor which may be consumed on the premises. In this case, we are not concerned with any order of the District Collector permitting change of site of shop for sale of liquor for consumption on the premises. The 3rd respondent for the first time had applied for grant of F.L.-3 licence and he has been granted license and this case does not involve the change in the site of shop. Therefore, the impugned action of the Collector, Raipur District, could not be interfered with on the ground that he failed to consult the Advisory Committee.

(8) We, however, find considerable force in the second and next contention of Shri B.P. Sharma. The District Collector, Raipur being a statutory authority is required to function within the bounds of law thereby meaning within the parameters and prescriptions laid down in the Act or Rules framed thereunder regulating his powers. The District Collector being donee of the statutory power cannot do something in violation of the provisions of the Act and Rules made thereunder, particularly, if those provisions are mandatory in nature. It is stated in the reply of respondent 1, 2 and 2A that Rani Sati Mata Temple, Saraswati Shishu Mandir and Petrol outlet situate at a distance of 465 Mtrs., 195 Mtrs. and 102 Mtrs. from the site of the Hotel Bar. There is no controversy between the parties that the population of the Raipur city , at the relevant point of time, was more than 2,50,000. Since the aforementioned three institutions situate at a distance more than 100 Mtrs from the site of the Bar, the existence of those three institutions would not be a bar for the District Collector to grant F.L-3 licence in favour of the 3rd respondent. But, admittedly, Hidayatullah

National Law University is situate at a distance of 380 Mtrs. from the site of the Hotel Bar and, therefore, it violates the provisions of clause (d) of sub-Rule (1) of Rule –I of the Rules. Of course, if the site of the proposed bar is within the prohibited distance from Hidayatullah National Law University, it is open to the State Government to grant exemption, but, admittedly, the State Government was not moved nor the State Government has passed any order granting permission to open bar in departure and relaxation of the prescribed distance of 500 Mtrs. The resultant position is that the Collector, Raipur District has granted F.L.-3 licence in favour of the 3rd respondent in breach of mandatory provisions of clause (d) sub-Rule (1) of Rule-I of the Rules.

(9) In the result and for the foregoing reasons, we allow the writ petition and quash the F.L.-3 licence granted by the Collector, Raipur District in favour of the 3rd respondent with costs quantified at Rs.3,000/-. Before parting with this case, we, however, make it clear that this order shall not come in the way of the 3rd respondent applying for grant of F.L.-3 licence and if such application is made, it is open for the Collector, Raipur District to deal with such application in accordance with the law and in the light of this order.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge